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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/665,841

**Applicant(s)**

BERGER ET AL.

**Examiner**

AMEE A. SHAH

**Art Unit**

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-21,23-25 and 27-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-21,23-25 and 27-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

Claims 1, 3-21 and 23-40 are pending in this action.

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 25, 2008, has been entered.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. §112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3-21 and 23-40 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 21 are directed to inventions in a common network site. However, the specification provides no support such a method and system. A careful reading of the specification directs the invention to a network environment, but does not in any way limit the environment to a common network site or describe how such a site would be enabled.

Because claims 3-20 and 23-40 are dependencies of claims 1 and 21, they inherit the same deficiencies and are rejected on the same basis.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3-21 and 23-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 21 recite the limitation of a “common network site;” however, it is not clear to one of ordinary skill in the art what is meant by this limitation, i.e., is a common network web site or a common network location (site). The specification provides no description for a common network site. For purposes of this action only, the examiner will interpret the site to be a web site.

Claims 1, 3-21 and 23-40 are further rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 21 recite the limitation of a fulfillment policies being selected from not accepting an order, fulfilling an order, routing a customer order. As there is no conjunction used between the options, it is not clear whether the policies are selected from all of the option or any of the options, i.e. is there an “and” or an “or” between options (ii) and (iii). Thus, the metes and bounds of the claims are unclear. For purposes of this action only, the examiner will interpret the options in the alternative, i.e. an “or.”

Because claims 3-20 and 23-40 are dependencies of claims 1 and 21, they inherit the same deficiencies, are rejected on the same bases, and are interpreted in the same manner.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 3-21 and 23-40 are rejected under 35 U.S.C. 101.

Claims 1 and 3-20 are rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter. Claims 1 and 3-20 are directed to disembodied data structure claims which are per se not statutory. *C.f. In re Wamerdam*. Independent claim 1 directs the invention to a system combined of a graphical consumer interface and order flow controller. The structural components of the interface and controller are not recited nor clarified in the specification. The functions of the interface and controller suggest that the interface and controller are merely software that executes the functions. Software, per se, is non-statutory as it is considered a data structure, i.e. functional descriptive material, not supported by sufficient structure to comprise an apparatus. A claim to a computer readable medium encoded with functional descriptive material that can function with a computer to effect a practical application that results in a useful, concrete and tangible result (i.e. running an assembly line or executing a stock transaction) satisfies Section 101. *See* U.S. Patent 5,710,578 to Beauregard etc., i.e., a set of instructions in combination with a computer system. *C.f. In re Wamerdam* (data structure stored in a computer memory), and *In re Lowery*, 32 USPQ2d 1031 (Fed. Cir. 1994) (data structure in a computer readable medium).

Claims 21 and 23-40 are rejected under 35 U.S.C. 101 because the method is not tied to a machine not does it transform underlying subject matter (such as an article or materials) to a different state or thing. *See In re Bilski et al*, 88 USPQ 2d 1385 CAFC (2008); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); and *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, claims 21 and 23-40 are non-statutory since they may be performed within the human mind. The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. Note the Board of Patent Appeals Informative Opinion *Ex parte Langemyer et al.* - available at [http://iplaw.bna.com/iplw/5000/split\\_display.adp?fedfid=10988734&vname=ippqcases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0](http://iplaw.bna.com/iplw/5000/split_display.adp?fedfid=10988734&vname=ippqcases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0).

***Examiner Note***

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 3-7, 14, 15, 18-27, 34, 35 and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al., US 6,125,352, cited by Applicant (hereafter referred to as “Franklin”) in view of Webber, WO 98/34167, cited by Applicant (hereafter referred to as “Webber”), and further in view of Walker et al., US 6,249,772 B1.**

Referring to claim 1. Franklin teaches a system for conducting commerce over a distributed network with a site that coordinates the distribution of products from a given or a plurality of product suppliers to consumers in a network environment, comprising a graphical

consumer interface configured to display product information for products from a plurality of suppliers and to receive consumer product orders from consumers to suppliers for products of said plurality of suppliers (Figs. 1 and 4, col. 2, lines 28-53, col. 7, lines 28-42, 49-58 and 65-67, col. 8, lines 1-18 and col. 22, lines 10-17). Franklin does not teach a controller to selectively route the orders of a given supplier to that supplier in accordance with fulfillment policies selected by said given supplier.

Webber teaches a system of automating transactions by buying and distributing products. In Webber's invention, certain events, such as a buyer ordering a product, trigger computational activity, such as determining which supplier to use, by a communications and activity platform ("CAP"), i.e. an order flow controller, based on the contracts associated with the transaction (see, e.g., page 1, line 3 through page 2, line 11). The contracts contain operational instructions and other terms and conditions including fulfillment policies of the suppliers and are negotiated and approved contracts (Figs. 2 and 4, page 15, lines 6-12, page 41, lines 15-17, and page 51, line 21). In a negotiated contract, the parties agree to and select the terms and conditions, one of which is the fulfillment policies, i.e. the fulfillment policies are selected by the seller. Thus, Webber teaches an order flow controller configured to selectively route consumer product orders for one or more products of a given supplier among a plurality of suppliers to said given supplier or to one or more retailers identified by said given supplier in accordance with the fulfillment policies selected by said given supplier. This automatic selection provides many benefits such as reducing costs (page 7, lines 22-23), improving accuracy, (page 7, lines 24-25), and saving time (page 7, lines 26-27).



It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine the known elements of a graphical user interface configured to display product information and receive consumer orders, as taught by Franklin, with the known elements of a controller configured to selectively route consumer orders of a given supplier to that supplier in accordance with the fulfillment policies, as taught by Webber, as each element would have performed the same function in combination as it did separately. One ordinary skill in the art would have recognized that the combination of Franklin and Webber would yield the predictable results of reducing costs, improving accuracy and saving time, as suggested by Webber.

While Webber teaches routing customer product orders in accordance with supplier selected fulfillment policies, it does not specifically teach that the fulfillments policies are selected from not accepting a customer order, fulfilling the order, or routing the order to a retailer. The examiner first notes that Webber's controller is capable of routing based on any fulfillments policies selected by the seller. Nonetheless, Walker teaches a system and method for a buyer purchasing a product online and fulfilling the order through a brick-and-mortar retailer (see, e.g. Abstract) including the known technique of routing the product order in accordance with supplier selected fulfillments policies selected from routing the order to a retailer identified by the supplier (e.g. col. 10, lines 35-54). This known technique is applicable to the system of Franklin/Webber as they all share characteristics and capabilities, namely they are directed to processing online orders.

One of ordinary skill in the art would have recognized that applying the known technique of Walker would have yielded predictable results and resulted in an improved system. It would

have been recognized that applying the known technique of Walker to the teachings of Franklin/Webber would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar systems. Further, the fulfillment policies of Webber being selected from accepting, fulfilling or routing the order, as taught by Walker, would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow for a higher possibility of a buyer finding what he/she is searching since the seller can direct them accordingly and for higher sales for brick-and-mortar establishments.

Referring to claim 3. Franklin/Webber/Walker teaches the system of claim 1 wherein the order flow controller is configured to not accept consumer orders for one or more products of a given supplier (Webber, page 22, lines 13-15). This would achieve the predictable result of taking only orders capable of being fulfilled in accordance with the supplier's policies, thereby reducing the frustration of consumers of unfulfilled orders and increasing customer satisfaction.

Referring to claim 4. Franklin/Webber/Walker teaches the system of claim 1 wherein the order flow controller is configured to route consumer product orders for one or more products of a given supplier to a product order list accessible by said given supplier or by one or more retailers identified by said given supplier (Webber, page 20, lines 19-24 and page 22, lines 11-30). This would achieve the predictable result of effectively and seamlessly fulfilling the consumer's product order.

Referring to claim 5. Franklin/Webber/Walker teaches the system of claim 4 further comprising a back room manager configured to remove product orders from the product order list upon receipt of a fulfillment acceptance indication from a retailer or supplier (Franklin, col. 21, lines 45-67 and col. 22, lines 1-7).

Referring to claim 6. Franklin/Webber/Walker teaches the system of claim 5 wherein the back room manager is configured to enable the given supplier to fulfill selected product orders identified on the product order list (Franklin, col. 27, lines 11-28 and 44-50).

Referring to claim 7. Franklin/Webber/Walker teaches the system of claim 6 wherein the back room manager is configured to enable the given supplier to fulfill selected product orders identified on the product order list only after a preselected period of time has passed since the product order was received (Webber, page 23, lines 25-30, note the preselected period of time is the traditional time expirations event to trigger contractual operations for which timing is specified within the contracts). This would achieve the predictable result of allowing for enough time to pass for the sale request at a point of sale to be transmitted and trigger the initiation of operations for the supply chain.

Referring to claim 14. Franklin/Webber/Walker teaches the system of claim 1 further comprising a price filter configured to transmit product price information and product availability information to the consumer interface (Webber, page 51, lines 15-31 and page 53, lines 1-16 – note the product price information is the price of the goods or services and the

product availability is the inventory management and shipping logistics). This would achieve the predictable result of better inform the consumer of the details of the order, decreasing the opportunities of errors, and increasing consumer satisfaction.

Referring to claim 15. Franklin/Webber/Walker teaches the system of claim 14 wherein the price filter is configured to transmit supplier specified product prices (Webber, page 52, lines 1-6). This would achieve the predictable result of provide the customer with the more specific information on pricing, thereby increasing customer satisfaction.

Referring to claim 18. Franklin/Webber/Walker teaches the system of claim 1 further comprising an escrow account manager configured to retain consumer payments for a period of time selected by said given supplier and to distribute retained funds (Webber, page 28, line 30 through page 29, line 25 – note that the escrow account manager is the invented system wherein the cash settlement can be delayed until after the parties approve or disapprove the settlement). This would achieve the predictable result of providing assurance to the customer that they will not be charged until the order is fulfilled or they are satisfied, increasing consumer trust and satisfaction.

Referring to claim 19. Franklin/Webber/Walker teaches the system of claim 18 wherein the escrow account manager is configured to distribute retained funds to an entity that shipped a product to a consumer (Webber, Fig. 4 and col. 4, lines 53-57). This would achieve the predictable result of allow for the shipper to obtain payment.

Referring to claim 20. Franklin/Webber/Walker teaches the system of claim 18 wherein the escrow account manager is configured to distribute funds retained for a given product order to a supplier that fulfilled the given product order, one or more retailers identified by that supplier, or to a combination of supplier and one or more of said retailers (Webber, Fig. 4 and page 32, lines 26-29 – note that the configuration to distribute funds retained is the system providing for conventional retailer connections as well as banks). This would achieve the predictable result of a system connected to a multitude of sellers, enterprises and banks, thereby providing the consumer with more choices and increased ease and seamlessness.

Referring to claims 21, 23-25, 27, 34, 35 and 38-40. All of the limitations in method claims 21, 23-27, 34, 35 and 38-40 are closely parallel to the limitations of apparatus claims 1, 3-7, 14, 15 and 18-20, respectively, analyzed above and are rejected on the same bases.

**Claims 8, 9, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin/Webber/Walker as applied to claims 1, 2, 21 and 22 above, and further in view of Johnson et al., US 6,055,516, cited by Applicant (hereafter referred to as “Johnson”)**

Referring to claim 8. Franklin/Webber/Walker teaches the system of claim 1, as discussed above. Franklin further teaches that data for each product is organized into groups (col. 6, lines 45-66). Walker further teaches displaying price and availability information for the products for each supplier (col. 20, lines 24-49).

Johnson teaches an electronic sourcing system maintaining a catalog of product information, checks availability of selected items and generates one or more purchase orders, including a consumer interface configured to display price and availability information for the products of each of the suppliers organized by product category (see Abstract, col. 5, lines 23-32, col. 6, lines 20-25 and col. 9, lines 42-55).

It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of displaying price and availability information for the products of each of the supplier organized by product category, a taught by Johnson, to improve the graphical user interface of Franklin/Webber/Walker for the predictable result suggested by Johnson of allowing customers to be able to better compare prices and availability of products so that they can make a better decision, thereby increasing customer satisfaction.

Referring to claim 9. Franklin/Webber/Walker/Johnson teaches the system of claim 8 further comprising a search engine configured to enable a consumer to search through the products of a given category by supplier, by product type, by product feature, or by a combination of two or more of these identifiers (Johnson, col. 4, lines 51-65). It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine the elements of Franklin/Webber/Walker and Johnson for the predictable results of providing easier browsing of catalogs and selecting of products.

Referring to claims 28 and 29. All of the limitations in method claims 28 and 29 are closely parallel to the limitations of apparatus claims 18 and 19, respectively, analyzed above and are rejected on the same bases.

**Claims 10-13 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin/Webber/Walker as applied to claims 1, 2, 21 and 22 above, and further in view of Knowlton et al., US 6,061,057, cited by Applicant (hereafter referred to as “Knowlton”).**

Referring to claim 10. Franklin/Webber/Walker teaches the system of claim 1, as discussed above, but does not teach the consumer interface being configured to display selected product representations in a separate scratch pad window.

Knowlton teaches an apparatus and method for creating and distributing graphical user interfaces for application programs including a consumer interface configured to enable a consumer to display selected product representations in a separate scratch pad window (col. 4, line 14 through col. 7, line 20 – note the product representations are the displayable images or icons).

It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of a consumer interface enabling a consumer to display selected product representations in a separate scratch pad window, as taught by Knowlton, to improve the graphical user interface of Franklin/Webber/Walker for the predictable results suggested by Knowlton of facilitating consumer browsing and allowing for more efficient presentation of goods and transactions (col. 2, lines 8-28).

Referring to claim 11. Franklin/Webber/Walker /Knowlton teaches the system of claim 10 wherein the consumer interface is configured to enable a consumer to remove product representations from the scratch pad window (Knowlton, col. 33, lines 41-59 – note that removing product representations is inherently included in the creation of desired lists). It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of a consumer interface enabling a consumer to remove product representations from the separate scratch pad window, as taught by Knowlton, to improve the graphical user interface of Franklin/Webber/Walker or the predictable results suggested by Knowlton of facilitating consumer browsing and allowing for more efficient presentation of goods and transactions (col. 2, lines 8-28).

Referring to claim 12. Franklin/Webber/Walker/Knowlton teaches the system of claim 10 wherein the consumer interface is configured to enable a consumer to drag a selected product representation from a product previews window to the scratch pad window (Knowlton, col. 33, lines 41-59). It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of a consumer interface enabling a consumer to drag selected product representations to the separate scratch pad window, as taught by Knowlton, to improve the graphical user interface of Franklin/Webber/Walker for the predictable results suggested by Knowlton of facilitating consumer browsing and allowing for more efficient presentation of goods and transactions (col. 2, lines 8-28).



Referring to claim 13. Franklin/Webber/Walker/Knowlton teaches the system of claim 12 wherein the consumer interface is configured to enable a consumer to initiate a product order from the scratch pad window or from the product preview window, or from both windows (Knowlton, col. 17, lines 5-10 – note the initiation of a product order is the updating of offering on a web page and the adding or removal of VLOs and not the entire web page). It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of a consumer interface enabling a consumer to initiate a product order from the separate scratch pad window, product preview window or both, as taught by Knowlton, to improve the graphical user interface of Franklin/Webber/Walker for the predictable results suggested by Knowlton of allowing for immediate or delayed purchasing/drafting, thereby increasing customer satisfaction.

Referring to claims 30-33. All of the limitations in method claims 30-33 are closely parallel to the limitations of apparatus claims 10-13, respectively, analyzed above and are rejected on the same bases.

**Claims 16, 17, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin/Webber/Walker as applied to claims 15 and 35 above, and further in view of Allsop et al., US 5,970,471, cited by Applicant (hereafter referred to as “Allsop”).**

Referring to claim 16. Franklin/Webber/Walker teaches the system of claim 15 with contracts which supply prices during preselected periods of time (Webber, page 23, line 26 and

page 41, lines 20-25), but does not teach the price filter configured to transmit retailer specified product prices.

Allsop teaches a system and method for performing electronic commerce with links from product manufacturers to authorized dealers with custom order interfaces, including a price filter configured to transmit retailer specified product prices (see Abstract – note the retailers are the dealerships).

It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of transmitting retailer specified product prices, as taught by Allsop, to improve the price filter of Franklin/Webber/Walker for the predictable result of allowing for more informed and knowledgeable customers who are able to find out the retailer specified prices.

Referring to claim 17. Franklin/Webber/Walker/Allsop teaches the system of claim 16 wherein the price filter is configured to transmit only a selected number of the lowest retailer specified product prices (Allsop, see Abstract – note the selected number of prices are the prices of the selected dealers). It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of transmitting only a selected number of the lowest retailer specified product prices, as taught by Allsop, to improve the price filter of Franklin/Webber/Walker for the predictable result of channeling business to certain retailers over others.

Referring to claims 36 and 37. All of the limitations in method claims 36 and 37 are closely parallel to the limitations of apparatus claims 16 and 17, respectively, analyzed above and are rejected on the same bases.

### ***Response to Arguments***

Applicant's arguments filed November 25, 2008, have been fully considered but they are not persuasive.

In response to applicant's argument that because claims 1 and 21 cite that the network is accessible over the internet, the claims comply with the written description requirement of 35 USC §112, 1st paragraph (Remarks, page 9), the examiner disagrees. The specification does not provide adequate support for a "common network site," as discussed above. Therefore, the rejection remains.

In response to applicant's argument that Franklin does not teach an order flow controller (Remarks, page 10), applicant is arguing against the reference individually when it is Franklin in view of Webber that teaches the order flow controller. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that Webber does not teach an order flow controller that selective routes customer orders because it does not teach the supplier controlling who fulfills the customer's order (Remarks, pages 11 and 12), this feature is not recited in the rejected

claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claims 1 and 21 recite the limitation of an order flow controller configured to selectively route orders to a given supplier OR to a retailer identified by the supplier in accordance with fulfillment policies of the supplier selected from not accepting an order, fulfilling an order OR routing an order to a retailer. If the supplier selects to fulfill all orders, the controller routes the order to the supplier. Applicant mischaracterizes the invention of Webber. It is not “a way of avoiding record keeping of sales and fulfillment of those sales by the seller” nor is it a reverse auction (Remarks, page 11). While that is an advantage of the invention, Webber is a way of electronically performing transactions, including determining suppliers, through a series of contracts (see, e.g., Abstract). It is through these contracts that rules for determining suppliers are created. These contracts are negotiated by the parties and include terms such as fulfillment policies, as discussed above. It is old and well known in business, and thus inherent, that in a negotiated contract, both parties select and agree to the terms. Therefore, the supplier can select the fulfillment policies. Thus, Webber provides the known element of selecting suppliers based on rules such as fulfillment policies that would be obvious to combine with the shopping system of Franklin. Furthermore, Walker is now cited to teach a supplier selecting to route the order to a retailer for fulfillment (see above), thus rendering the argument moot.

In response to applicant's argument that with respect to claim 3 that there is no teaching or motivation to configure the contract of Webber to not accept an order (Remarks, pages 12 and 13), the examiner refers applicant to the most recent developments and case law, specifically

*KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007), which forecloses applicant's assertion that a specific teaching is required for a finding of obviousness. *Id.*, 127 S.Ct. at 1741, 82 USPQ2d at 1396. Furthermore, Walker teaches that the supplier is able to funnel orders to a retailer (as discussed above), and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

In response to applicant's argument that Webber does teach the limitations of claim 7 of fulfilling orders after a preselected time period has passed because the contractual operation of starting or completion before expiration of a time limit is not fulfilling orders after a preselected time prior has passed (Remarks, page 13), the examiner disagrees. Claims are given their broadest reasonable interpretation consistent with the specification and with the interpretation that those skilled in the art would reach. See MPEP §2111. The words of a claim are given their plain meaning unless such meaning is inconsistent with the specification. See MPEP §2111.01. However, limitations from the specification cannot be imported into the claims. See MPEP §2111.01. Thus, a broad, reasonable interpretation of "preselected period of time" can include is the traditional time expirations event to trigger contractual operations for which timing is specified within the contract, as taught by Webber.

In response to applicant's argument that Webber does not teach the limitations of claim 20 of an escrow manager (Remarks, page 13 and 14), the examiner disagrees. Webber teaches a manager that delays payment until after the settlement is approved or disapproved, i.e. an escrow (page 28, line 30 through page 29, line 20) and payments can also be delayed until delivery of a product (page 39, lines 18-29). The examiner notes that while the examiner may direct

applicant's attention to a particular areas, paragraphs or lines of a prior art, the applicant is responsible for reviewing the entire prior art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMEE A. SHAH whose telephone number is (571)272-8116. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Amee A Shah/  
Examiner, Art Unit 3625

AAS

March 12, 2009